

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION**

WILLIAM EWING,

Plaintiff,

v.

**CITY OF TOLEDO; CRAIG
MARTIN; BILLIE JO SMITH;
DAVID JAMES ROBINSON,**

Defendants.

No. 6:18-cv-01626-MK

ORDER

AIKEN, District Judge.

This case comes before the Court on a Findings and Recommendation filed by Magistrate Judge Mustafa Kasubhai on March 31, 2021. ECF No. 77. Judge Kasubhai recommends that Defendants' Motion to Dismiss, ECF No. 53, be GRANTED in part and DENIED in part and that Plaintiff be permitted to file a Third Amended Complaint.

Under the Federal Magistrates Act, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate judge’s findings and recommendations, “the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate judge’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”). Although no review is required in the absence of objections, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Id.* at 154. The Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court should review the recommendation for “clear error on the face of the record.”

In this case, Plaintiff has filed Objections, ECF No. 79, and Defendants have filed a Response to Plaintiff’s Objections, ECF No. 80. The Court has reviewed the record and the disputed portions of the F&R and finds no error. The F&R, ECF No. 77, is ADOPTED. Defendants’ Motion to Dismiss, ECF No. 53, is GRANTED in part and DENIED in part as set forth by Judge Kasubhai in the F&R. Plaintiff shall have

thirty (30) days from the date of this Order in which to file his Third Amended Complaint.

It is so ORDERED and DATED this 1st day of September 2021.

/s/Ann Aiken
ANN AIKEN
United States District Judge